

No. 11027

United States
Circuit Court of Appeals
For the Ninth Circuit.

F. URI & CO., a Copartnership; GEORGE URI
and MRS. HOUSTON, copartners, doing business
under the name of F. Uri & Co.,

Appellant,

vs.

CHESTER BOWLES, Administrator, Office of
Price Administration,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

FILED

MAY 24 1945

PAUL P. O'BRIEN,
CLERK

No. 11027

United States
Circuit Court of Appeals
For the Ninth Circuit.

F. URI & CO., INC., a Corporation,
Appellant,
vs.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Attorneys for Plaintiff and Appellee.

In the District Court of the United States, Northern District of California, Southern Division

No. 23180G Civil

CHESTER BOWLES, Administrator, Office of
Price Administration,

Plaintiff,

vs.

F. URI & CO., INC., a Corporation,

Defendant.

COMPLAINT FOR INJUNCTION AND
TREBLE DAMAGES

COUNT ONE

1. In the judgment of the Price Administrator, the defendant has engaged in actions and practices which constitute violations of Section 4(a) of the Emergency Price Control Act of 1942 (Pub. Law 421, 77th Cong., 2d Sess., c. 26, 50 U.S.C.A. apx. 901, et seq.), hereinafter called "the Act", in that it violated Revised Maximum Price Regulation No. 169, as amended,—Beef and Veal Carcasses and Wholesale Cuts, effective in accordance with the provisions of said Act; and therefore, pursuant to Section 205(a) of the Act, the Price Administrator brings this action to enforce compliance with said Section 4(a).

2. Jurisdiction of this action is conferred upon the Court by Section 205(c) of the Act. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

3. At all times mentioned herein there has been in effect, pursuant to said Act, Revised Maximum Price Regulation No. 169, as amended, (7 F.R. 10381) establishing maximum prices for beef and veal fabricated cuts.

4. Between the 1st day of August, 1943, and the 1st day of February, 1944, defendant sold at wholesale and delivered beef and veal fabricated cuts at prices in excess of those established by said Maximum Price Regulation No. 169, as amended.

COUNT TWO

1. The allegations of paragraphs 1 and 2 of Count One herein are incorporated by reference as if fully set forth.

2. At all times mentioned herein there has been in effect, pursuant to the Act, Revised Maximum Price Regulation No. 239, as amended,—Lamb and Mutton Carcasses and cuts at wholesale and retail (7 F.R. 10688), establishing maximum prices for lamb and mutton fabricated (hotel supply) cuts.

3. Between the 1st day of August, 1943, and the 1st day of February 1944, defendant sold at wholesale and delivered lamb fabricated (hotel supply) cuts at prices in excess of those established by Revised Maximum Price Regulation No. 239, as amended.

COUNT THREE

1. The allegations of paragraphs 1 and 2 and 3 of Count One and paragraph 2 of Count Two herein are incorporated by reference as if fully set forth.

2. During all times herein mentioned Section 1364.415(a) of said Revised Maximum Price Regulation No. 169, as amended, provided in respect to beef and veal, and Section 1364.168(a) of Revised Maximum Price Regulation No. 239, as amended, provided in respect to lamb and mutton, that no hotel supply house or wholesaler of meat shall seal and deliver to purveyors of meals during any three-month period beginning June 1, September, or December 1, or March 1, a volume of fabricated meat cuts (hotel supply cuts) of all kinds in excess of 70 percent of the total volume by weight of all kinds and type of meats sold and delivered by such selling establishment from September 15, 1942, through December 15, 1942, to purveyors of meals other than sales to War Procurement Agencies.

3. That from September 15, 1942, through December 15, 1942, defendant sold and delivered to purveyors of meals other than to War Procurement Agencies, 339,779 pounds of meat; for the three month period, beginning September 1, 1943, defendant sold and delivered to purveyors of meals, other than War Procurement Agencies, 321,664 pounds of fabricated meat cuts; that said sales of fabricated meat cuts exceeded 70 per cent of the total volume by weight of all kinds of meat sold and delivered by defendant to purveyors of meals from September 15, 1942, through December 15, 1942, other than sales to War Procurement Agencies.

COUNT FOUR

1. The allegations of paragraphs 1, 2, and 3 of Count One and paragraph 2 of Count Two herein are incorporated by reference as if fully set forth.

2. At all times herein mentioned Section 1364.407(b) of Revised Maximum Price Regulation No. 169, as amended, and Section 1364.173(a) of Revised Maximum Price Regulation No. 239, as amended, provided that every person making a sale of any beef or veal wholesale cuts, or other meat items subject to said Revised Maximum Price Regulation No. 169, as amended, and every seller making sales or deliveries of lamb or mutton cuts, subject to Revised Maximum Price Regulation No. 239, as amended, shall keep for inspection by the Office of Price Administration for so long as the Emergency Price Control Act of 1942, as amended, is in effect, complete and accurate records of each such sale or delivery, showing, among other things, the grade of each type of meat cut sold.

That defendant subsequent to the 1st day of August, 1943, made numerous sales of beef and veal wholesale and fabricated cuts, and lamb and mutton cuts, but failed to keep for inspection by the Office of Price Administration accurate records of each such sale or delivery, showing the grade of each type of meat cut sold.

COUNT FIVE

1. Plaintiff, as Administrator, Office of Price Administration, brings this action for treble dam-

ages on behalf of the United States pursuant to the provisions of Section 205(c) of the Emergency Price Control Act of 1942 (Pub. Law 421, 77th Cong., 2d Sess., c. 26, 56 Stat. 23) enacted January 30, 1942, hereinafter called "the Act."

2. Jurisdiction of this Court is conferred upon this Court by Sections 205(c) and 205(e) of the Act.

3. At all times herein mentioned there has been in full force and effect, pursuant to the Act, Revised Maximum Price Regulation No. 169, as amended,—Beef and Veal Carcasses and Wholesale Cuts (7 F.R. 10381), and Revised Maximum Price Regulation No. 239, as amended,—Lamb and Mutton Carcasses and Cuts at Wholesale and Retail (7 F.R. 10688).

4. Between the 1st day of August 1943, and the 1st day of February, 1944, defendant sold at wholesale and delivered beef and veal fabricated cuts at prices in excess of those established by said Revised Maximum Price Regulation No. 169, as amended.

5. Between the 1st day of August, 1943, and the 1st day of February, 1944, defendant sold at wholesale and delivered lamb fabricated (hotel supply house) cuts at prices in excess of the Maximum prices established by Revised Maximum Price Regulation No. 239, as amended.

6. None of said purchases was made for use or consumption other than in the course of trade or business.

7. Three times the aggregate amount by which the prices received by the defendant in the transactions referred to in paragraphs 4 and 5 of this Count exceed the maximum prices provided by said Regulations equals \$32,864.34.

Wherefore, the Administrator Demands:

1. A permanent injunction enjoining the defendant, its officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with the defendant from:

Directly or indirectly selling, delivering, or offering for sale or delivery, any beef, veal, lamb or mutton wholesale or fabricated cuts at prices in excess of those established by Revised Maximum Price Regulation Nos. 169 and 239, both as amended, or otherwise violating or attempting or agreeing to do anything in violation of either of said Regulations or in violation of any Regulation or Order adopted pursuant to the Emergency Price Control Act of 1942 establishing maximum prices for any of said meat items.

2. A permanent injunction enjoining the defendant, its officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with the defendant from:

Selling and delivering to purveyors of meals other than the War Shipping Administration and/or contract schools, during any three months quota period, beginning June 1, September 1, December 1, or March 1, a total volume by weight of fabricated meat cuts and/or ground beef and miscellaneous beef items and/or boneless and miscellaneous veal cuts in excess of 90 per cent of the

total volume by weight of beef, veal, lamb and mutton, not including canned meats of any kind, variety meats and edible by products of any kind and/or sausage and similar products thereof sold or delivered by defendant from September 15, 1942, through December 15, 1942 to purveyors of meals other than to War Procurement Agencies.

3. A permanent injunction requiring and directing the defendant, its officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with the defendant, to keep for inspection by the Office of Price Administration for so long as the Emergency Price Control act of 1942, as amended, is in effect, complete and accurate records of each sale of beef or veal, wholesale or fabricated cuts, showing the data as required by Section 1364.407(b) of Revised Maximum Price Regulation No. 169, as amended, and complete and accurate records of each sale of lamb wholesale or fabricated cuts showing the data as required by Revised Maximum Price Regulation No. 239, as amended, showing among other things, the grade of each meat cut sold.

4. Judgment on behalf of the United States against the defendant in the sum of \$32,864.34.

5. Such other, further, and different relief as to the Court may seem just and proper in the premises.

Dated: February 29, 1944.

(sgd) GEORGE MONCHARSH

(sgd) THOS. C. RYAN

[Endorsed]: Filed Feb. 29, 1944.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT

COUNT ONE

Come now the defendant above named and answers the complaint; Defendant Admits, Denies and Alleges as Follows:

As to Count One, Defendant admits the allegations contained in paragraphs 2 and 3. Defendant denies generally and specifically each and every other allegation contained in [7] paragraphs 1 and 4 of said Count 1.

Answering Count 2, Defendant Admits, Denies and Alleges as Follows:

Defendant admits the allegation contained in paragraph 2. Defendant hereby refers to and incorporates herein by reference in answer to paragraph 1 of Count 2, each and all of the provisions of the forthcoming answer to the complaint which are in defense to paragraphs of plaintiffs Count 1 which are incorporated by reference thereto into plaintiff's Count 2. Defendant denies generally and specifically each and all of the allegations contained in paragraph 3.

Answering Count 3, Defendant Admits, Denies and Alleges as Follows:

Defendant hereby refers to and incorporates herein by reference in answer to paragraph 1 of Count 3 each and all of the provisions of the foregoing answer to the complaint which are in defense to paragraphs of plaintiff's Counts 1 and 2 which

are incorporated by reference thereto into plaintiff's Count 3.

Defendant admits the allegations contained in paragraph 2.

Defendant denies generally and specifically each and all of the allegations contained in paragraph 3.

Answering Count 4, Defendant Admits, Denies and Alleges as Follows:

Defendant hereby refers to and incorporates herein by reference in answer to paragraph 1 of Count 4 each and all of the provisions of the foregoing answer to the complaint which are in defense to paragraphs of plaintiff's Counts 1 and 2 which are incorporated by reference thereto into plaintiff's Count 4.

Defendant admits the allegations contained in paragraph 2.

Defendant denies generally and specifically each and [8] all of the allegations contained in paragraph 3.

Answering Count 5, Defendant Admits, Denies and Alleges as Follows:

Defendant admits the allegations contained in paragraphs 1, 2 and 3.

Defendant generally and specifically denies each and all of the allegations contained in paragraphs 4, 5, 6 & 7.

Wherefore, defendant prays that plaintiff take nothing by his complaint and that said complaint be dismissed with costs to defendant and that defendant shall have such other and further relief as may be meet and proper in the premises.

Dated: San Francisco, California, May 4, 1944.

EDMOND F. MAHER

Attorney for Defendant.

Service of Copy of Above Answer Acknowledged
This Sixth Day of May, 1944.

THOMAS C. RYAN

GEORGE A. FARADAY

W. H. BRUNNER

Attorneys for Plaintiff.

[Endorsed]: Filed May 8, 1944. [9]

[Title of District Court and Cause.]

MEMORANDUM DECISION ON PRE-TRIAL
ORDER

The question submitted by the parties for the determination of the Court, upon pre-trial conference in this case, arises out of the issue made by the complaint of the Price Administrator filed February 29, 1944 and the answer of the defendant filed May 8, 1944.

By the complaint, the Administrator seeks treble damages under Section 205-e of the Emergency Price Control Act of 1942 and an injunction under Section 205-a of the Act. The Administrator claims that the defendant infringed, during the periods stated in the complaint, revised maximum price regulation #169 (as amended by amendments 12 and 16) and revised maximum price regulation 239 (as amended by amendment 7). Said price regula-

tions were promulgated by the Administrator pursuant to the authority vested in him under Section 2-a [10] of the Act. The infraction charged is that defendant sold meats at the higher prices allowed to those having the status of a "hotel supply house" at a time when defendant was not entitled to such status.

Hotel Supply House

"Hotel supply house" is defined in the regulations as follows:

" 'Hotel supply house' means a separate selling establishment which is not physically attached to a packing or slaughtering plant, packer's branch house, wholesaler's or other selling establishment; which is engaged in the fabrication of meat cuts and in the sale of fabricated meat cuts, variety meats and edible by-products to purveyors of meals; and which during the period September 15, through December 15, 1942 sold to purveyors of meals, other than war procurement agencies, 70 per cent of the total weight volume of meat, variety meats, or edible by-products sold by it."

The Administrator has interpreted the regulation to mean that a "hotel supply house" loses its status as such if it sells meat to any but purveyors of meals. (See Price Interpretation #29 issued by the Office of Price Administration, some months after the promulgation of the regulation.)

Wide latitude is granted to the Administrator, with respect to the format of the regulations, under Section 2-c of the Act which provides: "Any regu-

lation or order under this section may be established in such form and manner, may contain such classification and differentiations, and may provide for such adjustments and reasonable exceptions, as in the judgment of the Administrator are necessary or proper in order to effectuate the purposes of this Act.”

The defendant contends that the regulation per se does not admit of the interpretation placed upon it by the Administrator. It is claimed that the last clause of the regulation, beginning with the words, “and which,” indicates that a “hotel supply house” even though required to be a “separate selling establishment” need not sell to purveyors of meals more than the amount of meat so sold during the base period designated in the regulation. [11]

The rules of construction to be here invoked are not the orthodox criteria applied to private contracts or in ordinary litigation. Technical dissection of language, and niceties resting upon punctuation, have no judicial appeal. The regulation must be considered in the light of the extraordinary objectives of a statute engendered by emergency and “as conditioned by the necessities of the public interest which Congress has sought to protect.” (*Hecht v. Bowles*, 321 U.S. 321, at 330.)

It is conceded that if the regulation means what the Administrator claims, the defendant has infringed the same. With the validity of the regulation, this Court has no concern. (Section 204-d of the Act.) The Court is here called upon to determine the meaning of the regulation only for the

purpose of deciding whether defendant has infringed as charged in the complaint.

By the regulation, it seems clear to the Court the Administrator intended to give a separate status to those engaged in selling meat to purveyors of meals. The "statement of considerations," issued by the Administrator pursuant to Section 2-A of the Act, indicates some of the factors underlying and justifying such purpose and intent. Meat purveyors, a substantial amount of whose sales during the base period, were to purveyors of meals, are granted by the regulation the status of a "hotel supply house," if they maintain a separate selling establishment devoted to that business. There appear to be adequate administrative bases for this requirement. Difficulty of enforcement to attain the objectives of the law alone appears to be an adequate reason. Designating "a hotel supply house" in the regulation as "a separate selling establishment" would seem to have no other reasonable purpose than that of exclusion of any other selling activity. [12]

Having in mind the objectives of the Act and the power and duties therein delegated to the Administrator, I am satisfied that the regulation clearly means what it says. The defendant must maintain a "separate selling establishment" devoted to sales to purveyors of meals in order to maintain the status of "a hotel supply house."

A pre-trial order may be prepared in accordance with the views expressed by the Court.

The Court desires to make this further comment:

Plaintiff seeks both treble damages and an in-

junction. Thus is raised a question which should be resolved by the Court in the light of the nature of the power vested in the Court in the enforcement of this statute. This subject is clarified by the decision of the Supreme Court in *Hecht v. Bowles*, *supra*. It may be that both remedies may be allowed or that only one of the two remedies sought is proper. On the other hand it may be that some "other order" as provided in Section 205-a of the Act would more fully meet the "standards of public interest," under the special circumstances of this case. In *Hecht v. Bowles*, the Supreme Court indicated, even though it was there only considering Section 205-a of the Act, that it was desirable that full opportunity should be afforded for equity courts to treat enforcement proceedings in accordance with traditional equity practices. Therefore counsel are advised that the Court does not feel that it can justly determine the proper remedy to be allowed in this case until further light is thrown upon the issues at the trial of the cause.

[Endorsed]: Filed July 11, 1944. [13]

[Title of District Court and Cause.]

PRE-TRIAL ORDER

This cause came on for pre-trial conference before the Honorable Louis E. Goodman, Judge of the United States District Court, on Saturday, May 27, 1944, W. H. Brunner, Esq., appearing as attorney for the plaintiff and Edmond F. Maher, Esq., appearing as attorney for the Defendant.

Based upon proceedings at said pre-trial conference, it is ordered as follows:

1. Upon stipulation of parties the caption of the complaint in said action be and the same is hereby amended to substitute in the place of F. Uri & Co., Inc., a corporation, the names of George Uri and Mrs. Houston, co-partners, doing business under the name of F. Uri & Co., and it is further stipulated that both defendants are appearing in this action with Edmond F. Maher as their attorney.

2. On motion of plaintiff and with the consent of defendant Count Four alleged in plaintiff's complaint be and the [14] same is hereby dismissed.

3. That at the pre-trial conference certain facts were stipulated, as set forth in this paragraph:

(a) During the base period September 15, 1942 to December 15, 1942, defendants qualified as a "hotel supply house" by selling and delivering to purveyors of meals, other than war procurement agencies, more than 70% of all meats sold by them.

(b) That from August 1, 1943 to February 1, 1944, defendants sold and delivered to purveyors of meals other than to war procurement agencies more than 70% but less than 100% of the total weight of meats sold by them, the balance being sold to other than purveyors of meals.

(c) That all of said sales and deliveries, both during the base period and subsequent to August 1, 1943, were made by said defendants out of one place of business located at 517-521 Clay Street in the City and County of San Francisco, State of California.

(d) That about the 1st of February, 1944, de-

defendants discontinued the practice of selling its surplus meats to others than purveyors of meals, and thereafter proceeded to sell and deliver only to purveyors of meals and war procurement agencies out of such business establishment.

4. That under the facts set forth in Paragraph 3 of the order, and pending the submission of further evidence at the trial of this action, the Court holds that when defendants made their first sales and deliveries of meat to persons other than purveyors of meals subsequent to August 1, 1943, the said defendants lost their status as a "hotel supply house", as defined in Section 1364.455 (b) (1) of RMPR 169, as amended by Amendment 12; with reference to veal as defined in Section 1464.470 (b) (1) of RMPR 169 as amended by Amendment 12; or with reference to lamb [15] and mutton as defined in Section 1364.160 (a) (5) of MPR 239 as amended by Amendment 7, and did not regain the status as a "hotel supply house" prior to February 1, 1944.

5. That the further hearing and trial of said action be and the same is hereby set for August 25, 1944.

6. The Court reserves the right to modify or amend this order at the time of trial.

Dated this 25th day of August, 1944.

LOUIS E. GOODMAN

Judge of the United States
District Court.

[Endorsed]: Filed Aug. 25, 1944.

[Title of District Court and Cause.]

STIPULATION AS TO FACTS

It Is Stipulated and Agreed between the parties hereto as follows:

1. That between August 1, 1943 and February 1, 1944, the period covered by plaintiff's complaint, defendant sold and delivered to purveyors of meals the following poundage of fabricated meat cuts at the maximum prices allowed for a "hotel supply house" in Revised Maximum Price Regulations Nos. 169 and 239:

280,668 pounds beef

43,920 pounds lamb

16,858 pounds veal

341,446 pounds Total

2. That the first sale of meat during said period, made by defendant to other than purveyors of meals, took place [17] on August 3, 1943 to P. Micheletti Co., 516 Davis Street, San Francisco, California. That prior to said sale to said P. Micheletti Co. on said date, defendant had sold to purveyors of meals 3,681 pounds of fabricated meat cuts.

3. That the maximum prices which defendant could have charged for such sales and deliveries as a "hotel supply house" averaged 2 cents per pound higher than those which he could have charged as a wholesale seller other than a "hotel supply house," and therefore for the purposes of this action 2 cents per pound is to be considered

the proper differential to be used in computing any overcharges which the Court may determine were made by defendant in making such sales and deliveries.

Dated this 25th day of August, 1944.

THOMAS C. RYAN

W. H. BRUNNER

Attorneys for Plaintiff

EDMOND F. MAHER

Attorney for Defendant

[Endorsed]: Filed Aug. 25, 1944. [18]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled action came on regularly for trial Friday, August 25, 1944 before the Honorable Louis E. Goodman, Judge of the United States District Court. The plaintiff was represented by W. H. Brunner, Esq., and defendants by Edmond F. Maher, Esq. After both oral and documentary evidence was offered on behalf of both parties and the matter having been submitted to the Court for decision, the Court finds as follows:

FINDINGS OF FACT

1. All the matters, facts and things alleged and set forth by plaintiff in Counts One and Two of plaintiff's complaint are and each of them is true.
2. That there is no evidence before the Court to [19] establish the allegations of Counts Three and Four of plaintiff's complaint, and the Court finds

that said counts of said complaint were abandoned by plaintiff during the course of trial.

3. As to Count Five of plaintiff's complaint the Court finds as follows:

(a) That all of the matters, facts and things alleged and set forth by plaintiff in paragraphs 1, 2 and 3 of Count Five of plaintiff's complaint are and each of them is true.

(b) That during the period September 15, 1942 to December 15, 1942 defendants qualified as a "hotel supply house" under Revised Maximum Price Regulations Nos. 169, and 239, both as amended, by selling and delivering to purveyors of meals other than war procurement agencies more than 70 per cent of all meats sold by defendants from a single selling establishment located at 517-521 Clay Street, in the City of San Francisco, California.

(c) That between the 1st day of August, 1943 and the 1st day of February, 1944, defendants sold and delivered to purveyors of meals other than war procurement agencies more than 70 per cent, but less than 100 per cent, of the total weight of meats sold and delivered by them out of their place of business located at 517-521 Clay Street, in the City and County of San Francisco, State of California, from which said place of business they likewise sold and delivered meat items to purchasers other than purveyors of meals, to-wit, to butchers. That during said period defendants sold the following poundage of fabricated meat cuts to purveyors of meals at the maximum prices allowed under Revised Maxi-

imum Price Regulations Nos. 169 and 239, both as amended, for sales of such fabricated meat cuts by a "hotel supply house:"

280,668 pounds of beef

43,920 pounds of lamb

16,858 pounds of veal

Total 341,446 pounds [20]

(d) That the first sale of meat during said period made by defendants to sellers other than purveyors of meals took place August 3, 1943 to P. Micheletti & Co., 516 Davis Street, San Francisco, California. That prior to said sale to said P. Micheletti & Co. on said date defendants had sold to purveyors of meals 3,681 pounds of fabricated meat cuts at the maximum prices allowed under Revised Maximum Price Regulations Nos. 169 and 239, both as amended, for sales of such fabricated cuts by hotel supply houses.

(e) That as a matter of law, the result of said sale to P. Michelette & Co. was that defendants lost their status as a "hotel supply house" under Revised Maximum Price Regulations Nos. 169 and 239, both as amended, and that thereafter, during the period covered by this action, the maximum prices which defendants could lawfully have charged purveyors of meals for fabricated cuts under said Regulations were the maximum prices permitted to be charged to purveyors of meals by packing or slaughtering plants, packing branch houses, wholesalers, or other selling establishments, rather than those permitted to be charged to pur-

veyors of meals by a "hotel supply house." That the said prices which defendants could lawfully have charged as aforesaid averaged 2 cents per pound less than the prices actually charged by defendants. That for the purposes of this action and on stipulation of counsel the Court finds that 2 cents per pound is the proper differential to be used in computing any overcharges made by defendants.

(f) That during the period between August 1, 1943 and February 1, 1944 defendants sold and delivered to purveyors of meals 337,765 pounds of fabricated meat cuts at maximum prices 2 cents per pound higher than the maximum prices allowed for such sales to packing or slaughtering plants, packing branch [21] houses, wholesalers, or other selling establishments under Revised Maximum Price Regulations Nos. 169 and 239, both as amended, which resulted in an actual overcharge of \$6,755.30.

(g) That the violations found by the Court to have been made herein were neither wilful nor the result of the failure of defendants to take practicable precautions against the occurrence of the violations.

(h) That defendants conducted no other operations than the fabrication of meats; the sale of fabricated cuts, variety meats and edible by-products to purveyors of meals and government procurement agencies; the sale of primal cuts to butchers; and the sale of bones, scraps, and fats to renderers and glue factories. That all sales of primal cuts made by defendants to butchers were made at defendants' costs without any mark-up or

profit whatsoever. That all sales of scraps, bones, and fats were made at the proper ceiling prices therefor.

(i) That the violations complained of by plaintiff ceased on or about February 1, 1944 in that defendants at said time discontinued the practice of selling meats to others than purveyors of meals, and thereafter and now are selling and delivering meats only to purveyors of meals at the maximum prices permitted under said Regulations to "hotel supply houses."

(j) That there is no evidence from which the Court could find that there is a likelihood of the practices complained of being resumed by defendants and therefore injunctive relief is unnecessary.

CONCLUSIONS OF LAW

As conclusions of law from the foregoing findings of fact, the Court concludes:

1. That plaintiff is entitled to a judgment against defendants on behalf of the United States for the sum of \$6,755.30. [22]

2. That plaintiff's application for injunction should be denied without prejudice.

3. That the Court should retain jurisdiction of this cause with leave to plaintiff on notice to renew his application for injunctive relief upon a showing of any further violations on the part of the defendants of any applicable price regulations applying to the sale and delivery of meat items.

Let judgment be entered accordingly.

Dated this 27th day of November, 1944.

LOUIS E. GOODMAN

Judge of the United States
District Court

Receipt of a copy of the within proposed Findings of Fact and Conclusions of Law are admitted this 21st day of November, 1944.

EDMOND F. MAHER

[Endorsed]: Filed Nov. 27, 1944. [23]

In the District Court of the United States, Northern District of California, Southern Division

No. 23180-G

CHESTER BOWLES, Administrator, Office of
Price Administration,

Plaintiff,

vs.

GEORGE URI and MRS. HOUSTON, co-partners,
doing business under the name of F. URI
& CO.,

Defendants.

JUDGMENT

The above entitled action came on regularly for trial on the 25th day of August, 1944 before the Honorable Louis E. Goodman, Judge of the United States District Court. The plaintiff was represented by W. H. Brunner, Esq. and defendants by

Edmond F. Maher, Esq. Evidence both oral and documentary was offered on behalf of both parties, and the matter having been submitted to the Court and the Court having filed herein its findings of fact and conclusions of law, it is hereby

Ordered, Adjudged and Decreed:

1. That plaintiff's application for an injunction be and the same is hereby denied without prejudice.

[24]

2. That this Court retain jurisdiction of this cause with leave to the plaintiff, on notice, to renew his application for injunctive relief upon a showing of any further violations on the part of defendants of Revised Maximum Price Regulations Nos. 169 and 239, both as amended, or any other maximum price regulation applying to the sale at wholesale of fabricated cuts of beer, veal, lamb or mutton.

3. That plaintiff have judgment on behalf of the United States against defendants in the sum of \$6,755.30.

4. That plaintiff have judgment for its costs of suit amounting to \$

Dated this 8th day of January, 1945.

LOUIS E. GOODMAN

Judge of the United States

District Court

[Endorsed]: Filed Jan. 8, 1945. [25]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given this 16th day of January, 1945, that F. Uri & Co., and individual parties defendant hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment of this Court entered on the 8th day of January, 1945 in favor of the plaintiff, Chester Bowles, Administrator, Office of Price Administration.

EDMOND F. MAHER

Attorney for Defendant.

Receipt of a copy of the within Notice of Appeal is hereby admitted this day of January, 1945.

GEORGE A. FARRADAY

W. H. BRUNNER

Attorneys for Plaintiff.

[Endorsed]: Filed Jan. 18, 1945. [26]

[Title of District Court and Cause.]

ORDER ALLOWING USE OF ORIGINAL TRANSCRIPT

Upon application of the Appellants, defendants herein, and the same being to the satisfaction of the Court, it is, by the Court this 2nd day of February, 1945:

Ordered: That the original transcript of testimony stenographically reported in said action be

transmitted by the Clerk of this Court to the United States Circuit Court of Appeals for the Ninth Circuit, as part of the record on appeal in lieu of a copy.

LOUIS E. GOODMAN

Judge of the United States
District Court

Dated: February 2, 1945.

[Endorsed]: Filed Feb. 2, 1945. [27]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 30 pages, numbered from 1 to 30, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of Chester Bowles, Administrator, Office of Price Administration, vs. F. Uri & Co., a corporation, Defendant, No. 23180-G, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$3.85 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 24th day of March, A. D. 1945.

[Seal]

C. W. CALBREATH,

Clerk

M. E. VAN BUREN

Deputy Clerk [31]

[Endorsed]: No. 11027. United States Circuit Court of Appeals for the Ninth Circuit. *F. Uri & Co., Inc.*, a corporation, Appellant, vs. *Chester Bowles*, Administrator, Office of Price Administration, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed April 4, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11027

F. URI & CO., a copartnership,

Appellant,

vs.

CHESTER BOWLES, Administrator, Office of
Price Administration,

Appellee.

STATEMENT OF POINTS

Appellant intends to rely on Appeal on the following points:

That under Section 2(h) of the Emergency Price Control Act, the Administrator may not compel changes in the business practices established in any industry except where such action is affirmatively found by the Administrator to be necessary to prevent circumvention or evasion of any regulation, order, price schedule, or requirement under the Act.

That under date of December 10, 1942, the Administrator issued Revised Maximum Price Regulation 169 and the definition of a "Hotel Supply House" therein contained did subsequently result in changes in the business practices of the meat industry.

That thereafter on the 26th Day of April, 1943, the Administrator issued Amendment No. 12 to Revised Maximum Price Regulation No. 169, and therein re-defined the term "Hotel Supply House"

for the purpose of restoring normal business practices within the meat industry.

That the purpose of this new definition of a Hotel Supply House was solely to restore and not to change normal business practices.

That Appellant qualified as a Hotel Supply House under the definition incorporated in Amendment 12 to Revised Maximum Price Regulation No. 169, and that having thus qualified, he was entitled to charge the prices established by Said Amendment for Hotel Supply Houses.

That when, as set forth in Paragraph 3(a) of the Pre-Trial Order, the Appellee stipulated that Appellant had qualified as a Hotel Supply House, Appellee thereby stipulated that Appellant maintained a separate selling unit not physically attached to a slaughtering plant, branch house, or wholesaler or other establishment through which at least seventy per cent (70%) of the total weighed volume of meat, distributed in the base period, was sold or delivered to purveyors of meals.

That if during the base period Appellant could have maintained a separate selling establishment through which at least seventy per cent (70%) of its meats were sold to purveyors of meals and the balance to other buyers, Appellant's status as a separate selling establishment was not lost when after qualifying as a Hotel Supply House it continued to sell more than seventy (70%) per cent of its meats to purveyors of meals, and the balance to other buyers.

That in his memorandum decision on Pre-Trial

order, the District Court Judge erred in finding that to maintain the status of a Hotel Supply House, Appellant must maintain a separate selling establishment devoted to sales to purveyors of meals and to the exclusion of any other selling activity.

That the District Court Judge erred in finding that Appellant had so lost said status and that the said Court erred in giving judgment to Appellee in the sum of Six Thousand Seven Hundred and Fifty Five Dollars and Thirty Cents, (\$6,755.30).

EDMOND F. MAHER

Attorney for Appellant

Service of copy of this designation acknowledged this 10th day of April, 1945.

W. A. BRUNNER

JOSEPH E. TINNEY

Attorneys for Appellee

[Endorsed]: Filed April 10, 1945. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF RECORD

The Appellant, F. Uri & Co., and the individual appellants in the above entitled cause, designate the following to constitute the record to be printed on appeal:

1. Complaint
2. Answer of Defendant
3. Stipulation as to facts
4. Memorandum of Opinion on Pre-Trial

5. Pre-Trial Order
6. Findings of Fact
7. Conclusions of Law
8. Judgment
9. Notice of Appeal by Defendants
10. Order allowing use of original transcript of testimony.
11. This designation.

EDMOND F. MAHER

Attorney for Appellant

Service of copy of this designation acknowledged
this 10th day of April, 1945.

W. H. BRUNNER

JOSEPH E. TINNEY

Attorneys for Appellee.

[Endorsed]: Filed April 10, 1945. Paul P.
O'Brien, Clerk.